

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: METHYL TERTIARY BUTYL ETHER
("MTBE") PRODUCTS LIABILITY LITIGATION

Village of Bethalto v. Ashland, Inc., et al.,)
S.D. Illinois, C.A. No. 3:10-396)
Town of Kouts v. Ashland, Inc., et al.,)
N.D. Indiana, C.A. No. 2:10-186)

U.S. DISTRICT COURT
S.D. OF N.Y.
2010 OCT 28 PM 3:38

MDL No. 1358

TRANSFER ORDER

Before the entire Panel^{*}: The oil company defendants¹ in these two actions move pursuant to former Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001),² asking the Panel to vacate its order conditionally transferring these actions to the Southern District of New York for inclusion in MDL No. 1358. Defendants argue that MDL proceedings are advanced and inclusion of *Village of Bethalto* and *Town of Kouts* is no longer necessary to achieve the just and efficient conduct of the litigation. Plaintiffs favor inclusion of their respective actions in MDL No. 1358, arguing that MDL proceedings are ongoing and Judge Scheindlin is in the best position to manage these proceedings.


After considering all argument of counsel, we find that *Village of Bethalto* and *Town of Kouts* involve common questions of fact with actions in this litigation previously transferred to the Southern District of New York, and that transfer of the actions to the Southern District of New York for inclusion

^{*} Judges Heyburn and Furgeson took no part in the disposition of this matter.

¹ Ashland, Inc.; BP Amoco Chemical Co.; BP Products North America, Inc.; Chevron Corp.; Chevron U.S.A., Inc.; CITGO Petroleum Corp.; CITGO Refining & Chemicals Co., L.P.; ConocoPhillips Co.; Crown Central, LLC; El Paso Merchant Energy-Petroleum Co.; Equilon Enterprises, LLC; Exxon Mobil Corp.; Exxon Mobil Chemical Co.; Exxon Mobil Oil Corp.; Flint Hills Resources, L.P.; Gulf Oil Limited Partnership; Marathon Petroleum Co., LLC; Marathon Oil Co.; Mobil Corp.; Motiva Enterprises, LLC; PDV Midwest Refining, LLC; The Premcor Refining Group, Inc.; Shell Oil Co.; Shell Oil Products Co., LLC; Shell Petroleum, Inc.; Shell Trading (US) Co.; Sunoco, Inc.; Sunoco, Inc. (R&M); Texaco, Inc.; TMR Co.; Total Petrochemicals USA, Inc.; Valero Energy Corp.; Valero Refining & Marketing Co.; and Valero Marketing & Supply Co.

² Amended Panel Rules became effective on October 4, 2010.

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in MDL No. 1358 will continue to serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. We further find that transfer of these actions is appropriate for reasons that we set out in our original order directing centralization in this docket. In that order, we held that the Southern District of New York was an appropriate Section 1407 forum for actions involving allegations relating to MTBE contamination. *See In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig.*, 2000 U.S. Dist. LEXIS 14901 (J.P.M.L. Oct. 10, 2000).

Given the ongoing discovery and other pretrial proceedings in MDL No. 1358, the Panel finds that inclusion of *Village of Bethalto* and *Town of Kouts* in MDL No. 1358 is appropriate. As defendants point out, multidistrict litigation is not static and, over time, the relative merits of transferring additional cases can change as the transferee court completes its primary tasks. *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 659 F.Supp.2d 1371, 1372 (J.P.M.L. 2009); *see also In re Cessna 208 Series Aircraft Prods. Liab. Litig.*, 655 F.Supp.2d 1379 (J.P.M.L. 2009). Whether continued inclusion of tag-along actions is appropriate is based upon a review of the status of the MDL proceedings and an assessment of the relative merits of transferring additional cases. Because the transferee judge supervises the day-to-day pretrial proceedings, the Panel also inquires from time-to-time whether the transferee judge thinks that continued inclusion of tag-along actions promotes the just and efficient conduct of litigation. Since the creation of this MDL, much discovery has been completed and the transferee judge has addressed many complex and novel legal issues. At this time, she remains in the best position to manage all related MTBE actions in order to streamline remaining discovery and pretrial motions.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable Shira A. Scheindlin for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION



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Kathryn H. Vratil
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